

RECEIPT # 59913
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DATE 8-13-04

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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U.S. DISTRICT COURT
DISTRICT OF MASS

TRUSTEES OF THE PLUMBERS & PIPEFITTERS'
NATIONAL PENSION FUND; TRUSTEES OF THE
PLUMBERS & PIPEFITTERS' INTERNATIONAL
TRAINING FUND; TRUSTEES OF THE PLUMBERS
AND PIPEFITTERS' LOCAL UNION NO. 4 HEALTH
& WELFARE FUND; PENSION FUND; ANNUITY
FUND; JOINT APPRENTICE TRAINING FUND;
INDUSTRY FUND; BUILDING & RELIEF FUND and
PLUMBERS AND PIPEFITTERS UNION LOCAL NO. 4

Plaintiffs

VS.

HVAC MECHANICAL SYSTEMS, INC.

Defendant

Civil Action No.

04 - 11776 NG

August 11, 2004

MAGISTRATE JUDGE Alexander

ERISA COLLECTION COMPLAINT

1. This is an action under the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 USC §1001, et seq., as amended by the Multi-Employer Pension Plan Amendments Act, 29 U.S.C. §1381 et seq., and the Labor Management Relations Act of 1947, 29 U.S.C. § 185, brought on behalf of the Trustees of the Plumbers & Pipefitters' National Pension Fund; Trustees of the Plumbers & Pipefitters' International Training Fund; Trustees of the Plumbers and Pipefitters' Local Union No. 4 Health & Welfare Fund; Pension Fund; Annuity Fund; Joint Apprentice Training Fund; Industry Fund; Building &

Relief Fund and Plumbers and Pipefitters Union Local No. 4 (the "Plaintiffs") for damages arising from unpaid Funds contributions.

2. This Court has jurisdiction, and venue lies in this district pursuant to ERISA § 502 (e)(1) and (2); 29 U.S.C. § 1132(e)(1) and (2), § 515; 29 U.S.C. § 1145 and the LMRA § 301 (a); 29 U.S.C. § 185(a), and 28 U.S.C. § 1331.

3. Defendant HVAC Mechanical Systems, Inc. (hereinafter "HVAC Mechanical") is an "employer" within the meaning of 29 U.S.C. §1002(5) with a principal place of business located at 34 Sullivan Road, Unit 17, North Billerica, Massachusetts 01862, and is an employer in an industry affecting commerce within the meaning of 29 U.S.C. § 142(1) and § 152 (2), (6) and (7).

4. Defendant HVAC Mechanical is a member of the New England Mechanical Contractors' Association (hereinafter "Association") and has assigned its bargaining rights to the Association for purposes of negotiating a collective bargaining agreement with Plumbers and Pipefitters Union Local No. 4 (hereinafter the "Union"). Defendant HVAC Mechanical is, therefore, a party to and bound by the Collective Bargaining Agreement (hereinafter "CBA") between the Association and the Union.

5. Plaintiffs Trustees of the Plumbers & Pipefitters' National Pension Fund; Trustees of the Plumbers & Pipefitters' International Training Fund; Trustees of the Plumbers and Pipefitters' Local Union No. 4 Health & Welfare Fund; Pension Fund; Annuity Fund; Joint Apprentice Training Fund; Industry Fund; and Building & Relief Fund

(the "Funds") are third-party beneficiaries of the CBA between the Association and the Union.

6. Plaintiffs are "fiduciaries" within the meaning of Section 502(a)(3) of ERISA, 29 U.S.C. §1002(37)(A) and each is an "employee benefit plan" or "plan" within the meaning of Section 3(3) of ERISA, 29 U.S.C., §1002(3). The Funds have their principal office at and are administered from 29 Endicott Street, Worcester, Massachusetts 01610.

COUNT I: ERISA – Claim for Delinquent Funds Contributions

7. At all material times, Defendant was obligated by the terms of the CBA between Defendant and the Union and by the terms of the Funds' Agreement and Declaration of Trust ("Trust Agreement") to which Defendant is bound to make contributions to the Plaintiff Funds for each hour worked by its plumbing employees who labor under the terms of the CBA.

8. Consistent with the CBA and the Trust Agreement's collection policy, Funds contributions are due on the thirtieth (30th) day of the month following the month in which the contributions accrued.

9. Defendant's last payment to the Funds was for contributions owed for the month of October 2003. Since that time, Defendant has failed to make required contributions to the Plaintiff Funds in violation of Section 515 of ERISA, 29 U.S.C. § 1145. Defendant is presently delinquent in contributions owed to the Funds for the months of November 2003 through July 2004.

10. Monthly reports submitted to the Funds by the Defendant, as required by the Agreement's collection policy and the CBA, demonstrate that Defendant owes contributions to the Funds for work performed by its employees and Union members for the months of November 2003, December 2003, January 2004 and February 2004 in the amounts of **\$17,032.14**, **\$17,097.36**, **\$8,203.71** and **\$777.77** respectively, of which only **\$8,624.80** has been paid to date. Accordingly, for the period of November through February 2004, the Defendant owes delinquent contributions to the Funds in the amount of **\$34,486.18**.

11. The Defendant has failed to submit the required monthly reports for the months of March 2004 through July 2004. Upon information and belief, the Defendant owes *estimated* contributions to the Funds for work performed by its employees and Union members for the months of March 2004, April 2004, May 2004, June 2004 and July 2004 in the amounts of **\$6,398.40**, **\$6,398.40**, **\$6,398.40**, **\$6,398.40** and **\$4,798.80** respectively. Accordingly, for the period of March through July 2004, it is *estimated* that the Defendant owes delinquent contributions to the Funds in the amount of **\$30,392.40**.

12. Upon information and belief, it is *estimated* that the Defendant owes aggregate contributions of **\$73,503.38** for the period of November 2003 through July 2004, of which **\$8,624.80** has been paid.

13. This Complaint claims all present delinquencies owed to the Funds by Defendant referenced in Paragraphs 10 and 11 above and all future delinquencies that become due and owing during the pendency of this collection lawsuit.

COUNT II: LABOR MANAGEMENT RELATIONS ACT

14. Plaintiffs hereby incorporate by reference the above Paragraphs 1-13.

15. By the above action, Defendant has violated the parties' CBA, to which the Plaintiffs are third-party beneficiaries with standing to bring a breach of contract claim pursuant to LMRA § 310(a), 29 U.S.C. § 185(a); and Plaintiffs are entitled to relief ordering the Defendant to remit contributions due and owing under the terms of the parties' CBA.

WHEREFORE, Plaintiffs demand that judgment enter in accordance with Sections 502(a)(3) and 515 of ERISA, 29 U.S.C. § 1132(g)(2) and § 1145, and Section 301 of the LMRA, 29 USC § 185:

1. Awarding the Plaintiffs the following:

(a) the unpaid contributions as follows:

November 2003:	\$17,032.14
December 2003:	\$17,097.36
January 2004:	\$8,203.71
February 2004:	\$777.77
March 2004:	\$6,398.40
April 2004:	\$6,398.40
May 2004:	\$6,398.40
June 2004:	\$6,398.40
July 2004:	<u>\$4,798.80</u>
TOTAL DELINQUENCIES:	\$73,503.38

(b) contributions received to date: **(\$8,624.80)**

Total of (a) and (b): **\$64,878.58**

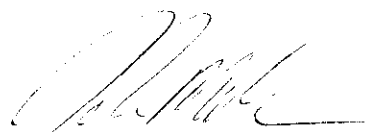
(c) subsequent delinquencies and late fees that may become due and owing during the pendency of this lawsuit;

(d) interest on delinquent payments from the date of this lawsuit through the date of final payment;

- (e) liquidated damages in an amount equal to the greater of interest on unpaid contributions or twenty percent (20%) of the unpaid contributions;
 - (f) all costs and reasonable attorney's fees incurred by the Plaintiffs in connection with this action; and
2. Ordering such other and further relief as this Court may deem just and proper.

DATED at East Hartford, Connecticut, this 11th day of August 2004.

THE PLAINTIFFS,

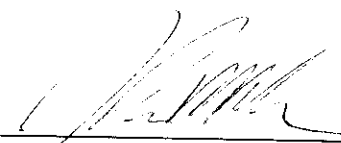
By: 
John M. Brown, Esq.
ROBERT M. CHEVERIE &
ASSOCIATES, P.C.
Commerce Center One
333 East River Drive, Suite 101
East Hartford, CT 06108-4203
Tele.: (860) 290-9610
BBO #651103
THEIR ATTORNEY

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing ERISA Collection Complaint has been served by certified mail, as required by Section 502(h) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. Section 1132(h), this 11th day of August 2004, on the following:

Secretary of the Treasury
INTERNAL REVENUE SERVICE
P. O. Box 13163
Baltimore, MD 21203
Attn: **Employee Plans**

Secretary of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210
Attn: **Assistant Solicitor for Plan Benefits Security**



John M. Brown

JMB.LOCAL 4.HVAC MECHANICAL SYSTEMS
Complaint.8-11-04

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) TRUSTEES OF THE PLUMBERS & PIPEFITTERS' NATIONAL PENSION FUND, ET AL V. HVAC MECHANICAL SYSTEMS, INC.

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

☐

I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.

☒

II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950.

*Also complete AO 120 or AO 121 for patent, trademark or copyright cases

☐

III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.

☐

IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.

☐

V. 150, 152, 153.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

None

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES ☐

NO ☒

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES ☐

NO ☒

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES ☐

NO ☐

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES ☐

NO ☐

7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES ☐

NO ☒

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division ☐

Central Division ☐

Western Division ☐

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division ☐

Central Division ☒

Western Division ☐

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES ☐

NO ☐

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME John M. Brown, ROBERT M. CHEVERIE & ASSOCIATES, P.C.

ADDRESS 333 East River Drive, Suite 101, East Hartford, CT 06108

TELEPHONE NO. (860) 290-9610

CIVIL COVER SHEET

JS 44
(Rev. 7/95)

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I (a) PLAINTIFFS

Trustees of the Plumbers & Pipefitters' National Pension Fund;
Trustees of the Plumbers & Pipefitters' International Training Fund;
Trustees of the Plumbers and Pipefitters' Local Union No. 4 Health
& Welfare Fund; Pension Fund; Annuity Fund; Joint Apprentice
Training Fund; Industry Fund; Building & Relief Fund and Plumbers
and Pipefitters Union Local No. 4

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Worcester
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

John M. Brown, Esq.
ROBERT M. CHEVERIE & ASSOCIATES, P.C.
333 East River Drive, Suite 101
East Hartford, CT 06108 (860) 290-9610

DEFENDANTS

HVAC Mechanical Systems, Inc.

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Middlesex
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
TRACT OF LAND INVOLVED

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

Breach of Collective Bargaining Agreement and to collect contributions due to Plaintiffs' Funds under ERISA,
29 U.S.C. Sections 185 and 29 U.S.C., Section 1002 et. seq.

V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input checked="" type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 hia (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405)(g))	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Other (including 1983 Actions)		

VI. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
☐ UNDER F.R.C.P. 23

DEMAND \$85,000.00

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ YES ☐ NO

VIII. RELATED CASE(S) IF ANY:

JUDGE

DOCKET NUMBER

SIGNATURE OF ATTORNEY OF RECORD

DATE

August 11, 2004

John M. Brown